EASEMENTS: REVOCABILITY OF PAROL LICENCES AFTER EXECUTION.—In *Imperial Water Company v. Lucy Wores,* the plaintiff sought to quiet its use of a waste ditch or canal across the defendant's land. This waste ditch was constructed by the plaintiff at a considerable expense and under a parol license from the defendant. The plaintiff was successful in its suit and was allowed costs under subdivision 5 of section 1022 of the Code of Civil Procedure which allows costs of course to a plaintiff upon a judgment in his favor in actions involving the title or possession to real property. The court held that "the right, although originating in a license, exists for the benefit of the licensee's land and has become irrevocable." It also says: "its character becomes that of an easement which is an interest in real property within the meaning of the code section above referred to."

But what is the real meaning of the term "irrevocable" when applied to a mere parol license, standing alone and unconnected with the conveyance of any interest in land or with any written contract respecting the same? The cases present conflicting views on this question, falling into three general groups.

The first, and what may be termed the stricter view, is that of absolute revocability. The licensor may always revoke a mere parol license, even though the licensee has performed acts under the same or has expended labor or money in reliance thereon.[2] This holding is based primarily on the ground that to deny revocability would be to create an interest in real property equivalent to an easement without complying with the requirements of the Statute of Frauds or, in most jurisdiction where easements can only be created by deed, without that formality.

The second and the more liberal view is that of absolute irrevocability. As expressed in Stoner v. Zucker,[3] the license becomes in all essentials an easement upon the licensor's land, continuing so long as its nature demands. The principal basis for this view is equitable estoppel; the license is declared to be irrevocable to prevent the licensor from perpetrating a fraud upon the licensee.[4] It is not right, say proponents of this view, that the

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[1] (Dec. 24, 1915), 22 Cal. App. Dec. 12, 155 Pac. 124.

[2] Pifer v. Brown (1897), 43 W. Va. 412, 27 S. E. 399, 49 L. R. A. 497, note; Yeager v. Tuning (1908), 79 Ohio St. 121, 86 N. E. 657, 19 L. R. A. (N. S.) 700, note; Lawrence v. Springer (1892), 49 N. J. Eq. 289, 24 Atl. 933, 31 Am. St. Rep. 702; Jones v. Stover (1906), 131 Iowa, 119, 108 N. W. 112, 6 L. R. A. (N. S.), 154; Hicks Bros. v. Swift Creek Mill Co. (1902), 133 Ala. 411, 31 So. 947, 57 L. R. A. 720, 91 Am. St. Rep. 38; Nunnelly v. So. Iron Co. (1895), 94 Tenn. 397, 29 S. W. 361, 28 L. R. A. 421; Mumford v. Whitney (1836), 15 Wend. 380, 30 Am. Dec. 60.

[3] (1906), 148 Cal. 516, 83 Pac. 808, 113 Am. St. Rep. 301, 7 Ann. Cas. 704.

[4] Rerick v. Kern (1826), 14 Serg. & R. 267, 16 Am. Dec. 497; La Fevre v. La Fevre (1818), 4 Serg. & R. 241, 8 Am. Dec. 696; Appeal

licensor should stand by and allow the licensee to expend his labor and money and then revoke the license and deprive him of his property. The weakness of this theory is that it permits the creation of easements without a deed and without compliance with the Statute of Frauds.[5] It may be that a right by estoppel is no real right at all, but merely a means to prevent one having a right from exercising it. But granting the theoretical difference between an estoppel and a property right, to deny the revocability of the license is to admit in practical fact the creation of easements without a compliance with the Statute of Frauds.

Between the two views just expressed stands the third, the doctrine of conditional revocability. Under this theory the licensor may terminate the license at will providing he puts the licensee *in statu quo* by compensating him for his expenditures in labor, money or materials.[6] This way of treating the problem protects the licensee without imposing an irrevocable burden upon the licensor's land. There is little danger of fraud and therefore no necessity of invoking the doctrine of equitable estoppel. Nor is the Statute of Frauds violated. This third view seems to be the most reasonable of the three, although circumstances might arise wherein it too would work a hardship. For example, if the revocation of the license were to destroy the licensee's business or the usefulness of his property, the damage might be irreparable.[7] The answer is that he should have secured himself in the beginning by procuring an easement, and having contented himself with a mere license, he is bound to know its revocable character and must not complain of its revocation.

The doctrine of conditional revocability though expressed in the case of Flick v. Bell[8] does not prevail in California. The California Supreme Court, in those cases wherein revocation would work hardship, is committed to the rule of absolute irrevocability as announced in Stoner v. Zucker.[9]

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of Clelland (1890), 133 Pa. 189, 19 Atl. 352, 7 L. R. A. 752; Curtis v. La Grande Water Co. (1890), 20 Ore. 34, 23 Pac. 808, 10 L. R. A. 484; Miller & Lux v. Kern Co. Land Co. (1908), 154 Cal. 785, 99 Pac. 179.

[5] Nowlin Lumber Co. v. Wilson (1899), 119 Mich. 406, 78 N. W. 338. See cases supra, n. 4.

[6] Flick v. Bell (1895), 5 Cal. Unrep. Cas. 206, 42 Pac. 813; Dillon v. Crook (1875), 11 Bush, 321; Addison v. Hack (1844), 2 Gill, 221, 41 Am. Dec. 421; Woodbury v. Parshley (1834), 7 N. H. 237, 26 Am. Dec. 739; Dawson v. West Md. R. Co. (1907), 107 Md. 70, 68 Atl. 301, 14 L. R. A. (N. S.) 809, 126 Am. St. Rep. 337, 15 Ann. Cas. 678; Savage v. Salem (1893), 23 Ore. 381, 31 Pac. 832, 24 L. R. A. 787, 37 Am. St. Rep. 688; Ameriscoggin Bridge v. Bragg (1840), 11 N. H. 102; Lane v. Miller (1867), 27 Ind. 534.

[7] McPhee v. Kelsey (1903), 44 Ore. 193, 74 Pac. 401.

[8] Flick v. Bell (1895), 5 Cal. Unrep. Cas. 206, 42 Pac. 813.

[9] Supra, n. 3.